IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5633 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL MARINE PRODUCTS

Versus

GEB

Appearance:

MR AD DAGLI for MR YOGESH S LAKHANI for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/04/2000

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The grievances made by the petitioner in this Special Civil Application are that, firstly it is stated that the action of the respondent no.1 and its officers not to install three phase connection at the plant of the

petitioner is not appropriate and justifiable. As a consequence thereof, the prayer has been made by the petitioner for direction to the respondent no.1 to install three phase connection at the plant of the petitioner immediately. The second grievance has been made that because of inaction or omission on the part of the respondent no.1 and its officer, the petitioner could not come and start cold storage as a result of which the petitioner has incurred heavy liability of payment of the dues to the GIDC and, as such, the respondent no.1 may be directed to pay compensation. In para-6 of the petition, the petitioner has made reference to the legal notice dated 5.2.1998 claiming Rs. 15 lacs as the amount of compensation from the respondent no.1. In para-5 the petitioner submits that he may be awarded compensation of Rs. 3 lacs by this Court which is reasonable sum for negligence of the respondent no.1 in discharging its duties. From para-5 I further find that the petitioner has not paid dues of the GIDC also. GIDC has started to make demand Rs. 11,35,162/-. To avoid the payment of the dues of the GIDC, the possibility of filing this petition by the petitioner cannot be overruled. The petitioner, in case, was really aggrieved of negligance what alleged by him of the respondent no.1 and 2, he could have filed writ petition in this Court much earlier, but that has not been done. For claim of the amount of the compensation many questions of facts are to be gone into and more so disputed questions of fact. The appropriate remedy for the claim of compensation would have been Civil Suit and not the petition under Article 226 of the Constitution. This Court normally in the proceedings under Article 226 of the Constitution does not permit the party to lead oral evidence. In the matter of the adjudication of the claim of compensation against alleged wrongdoer oral evidence will be necessary from both sides. The prayer made by the petitioner for direction to the respondent nos. 1 and 2 to pay Rs. 3 lacs to him as compensation is wholly misconceived and cannot be granted. So far as to the other grievance is concerned, it has to be decided by the respondent no.1 and its officers. If the petitioner has given legal notice and the same has not been replied by the respondent no.1 certainly this act of the respondent no.1 is not befitting to the authority like respondent no.1. The petitioner is free to file fresh representation in respect of his grievances made in the application for three phase connection. As and when the representation is made by the petitioner the respondent no.1 shall decide the same within the period of one month from the date of receipt thereof by passing a speaking order.

2. Before parting with the judgment it is to be stated that each case has to be decided on its own facts. The decision of Andhra Pradesh High Court, on which reliance is placed by the petitioner, in the case of Mrs. Shanta Vs. State of Andhra Pradesh, AIR 1998 ANDHRA PRADESH, Page-51 is of little help to the petitioner in this case. Subject to aforestaed liberty and direction, this Special Civil Application fails and same is dismissed. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote,)

(Vipul)